

# PATENT COOPERATION TREATY

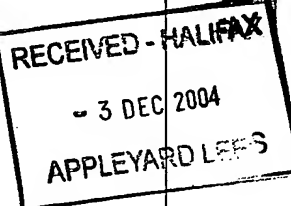
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From the  
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

## PCT

To:

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WRITTEN OPINION  
(PCT Rule 66)

|  |   |
|--|---|
| Date of mailing<br>(day/month/year) <span style="float: right;">30.11.2004</span>              |   |
| Applicant's or agent's file reference<br>RJP/JFB/Y2081   | <b>REPLY DUE</b> <span style="float: right;"><b>within 1 month(s)</b><br/>from the above date of mailing</span> |
| International application No.<br>PCT/GB 03/05318   | International filing date (day/month/year)<br>05.12.2003  |
| Priority date (day/month/year)<br>06.12.2002   |   |
| International Patent Classification (IPC) or both national classification and IPC<br>G01F19/00 |   |
| Applicant<br>BOOTS HEALTHCARE INTERNATIONAL LIMITED et al.                                     |   |

1. This written opinion is the **first** drawn up by this International Preliminary Examining Authority.
2. This opinion contains indications relating to the following items:
  - I ☒ Basis of the opinion
  - II ☐ Priority
  - III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
  - IV ☐ Lack of unity of invention
  - V ☒ Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
  - VI ☐ Certain documents cited
  - VII ☐ Certain defects in the international application
  - VIII ☐ Certain observations on the international application
3. The applicant is hereby **invited to reply** to this opinion.
 

**When?** See the time limit indicated above. The applicant may, before the expiration of that time limit, request this Authority to grant an extension, see Rule 66.2(d).

**How?** By submitting a written reply, accompanied, where appropriate, by amendments, according to Rule 66.3. For the form and the language of the amendments, see Rules 66.8 and 66.9.

**Also:** For an additional opportunity to submit amendments, see Rule 66.4.  
For the examiner's obligation to consider amendments and/or arguments, see Rule 66.4 bis.  
For an informal communication with the examiner, see Rule 66.6.

**If no reply is filed,** the international preliminary examination report will be established on the basis of this opinion.
4. The final date by which the international preliminary examination report must be established according to Rule 69.2 is: 06.04.2005

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| Name and mailing address of the International preliminary examining authority:<br><br>European Patent Office<br>D-80298 Munich<br>Tel. +49 89 2399 - 0 Tx: 523656 epmu d<br>Fax: +49 89 2399 - 4465 | Authorized Officer<br><b>Roetsch, P</b><br>Formalities officer (incl. extension of time limits)<br>Vilz, B<br>Telephone No. +49 89 2399-2292 |
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**1. Basis of the opinion**

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this opinion as "originally filed"*):

**Description, Pages**

1-9 as originally filed

**Claims, Numbers**

1-9 as originally filed

**Drawings, Sheets**

1/3-3/3 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages:
- ☐ the claims, Nos.:
- ☐ the drawings, sheets:

5. ☐ This opinion has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

6. Additional observations, if necessary:

**V. Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement****1. Statement**

|                               |        |     |
|-------------------------------|--------|-----|
| Novelty (N)                   | Claims |     |
| Inventive step (IS)           | Claims | 1-9 |
| Industrial applicability (IA) | Claims |     |

**2. Citations and explanations****see separate sheet**

Reference is made to the following documents:

- D1:** ES 276 900 U (CAMP FABRICA DE JABONES) 16 June 1984 (1984-06-16)
- D2:** DE 83 33 126 U (TAD PHARM WERK) 2 February 1984 (1984-02-02)
- D3:** US-A-2 019 071 (CARR FRANK P) 29 October 1935 (1935-10-29)
- D4:** US 202 268 A (WILMER KELLER) 9 April 1878 (1878-04-09)

**Ad Section V**

- 1) The present application does not meet the requirements of Article 33(1) PCT, because, as far as the claims can at present be understood, the subject-matter of claims 1-9 does not involve an inventive step in the sense of Article 33(3) PCT.

2) **Independent claim 1**

2.1) Document **D1** discloses (cf. figures 1-2 and the related text-passages) a measuring and dispensing device (cf. p. 1, l. 1-12) for attachment to the cap (5) on a bottle of liquid (7), the device comprising on one of its sides a socket formation (3) by means of which it may be releasably attached to the cap (see fig. 1-2 and p. 3, l. 2-6), and on another side a formation for receiving liquid (see figures 1 and 5).

2.2) The differences, if any, between the subject matter of the claim and the device of **D1** are:

- (1) the liquid is a liquid medicine and
- (2) the formation is concave.

2.3) The first problem to be solved is how to adapt the measuring and dispensing device to a bottle of liquid medicine. This feature does not need any inventive skill since the measuring and dispensing device disclosed in **D1** is adapted to any kind of liquid (cf. p. 1, l. 4-12).

The second problem (independent of the first one) to be solved by the use of a concave formation is how to adapt the form of the device to different shapes of the bottle. This feature has already been employed for the same purpose in a similar measuring and dispensing device, see document **D2**, fig. 3 and p. 10, third paragraph. It would therefore be obvious to the person skilled in the art, to apply this feature with corresponding effect to a device according to document **D1**, thereby arriving at a device according to claim 1.

2.4) Thus the solutions proposed in claim 1 of the present application cannot be considered as involving an inventive step.

2.5) Should the applicant even so discern a difference between the formation used in **D2** and the "concave formation" defined in claim 1 it is already noted that no inventive step would appear to be involved in replacing the formation used in **D1** with the concave formation used in **D3** (see **D3**, fig. 4).

**3) Dependent claims 2-5**

Dependent claims 2-5 do not appear to contain any additional features which, in combination with the features of any claim to which they refer, meet the requirements of the EPC with respect to inventive step, because the additional features of claims 2-5 are already disclosed in **D1** and/or in **D2**:

- Claims 2-3: see **D1**, fig. 1 and **D2**, fig. 3.
- Claim 4: see **D2**, fig. 3 and page 9, lines 6-14 (see also **D4**, fig. 2).
- Claim 5: see **D2**, page 9, lines 10-14.

[the polycarbonate material does a priori "not act to retain liquid medicine"; this feature is anyway directly dependent on the properties of the liquid medicine itself].

**4) Claims 6-9**

Claims 6-9 do not appear to contain any additional features which meet the requirements of the EPC with respect to inventive step, because all the additional features are already disclosed in **D1** (see fig. 1-2).

**RULE 6.2(a) PCT**

The independent claim 9 rely on references to the drawings. This does not meet the requirements of Rule 6.2(a) PCT because in this application it is not "absolutely necessary" to rely on reference to the drawings in order to define the device (see also the PCT Guidelines, III, 4.10.). Claim 9 should be deleted.

**MISCELLANEOUS**

- 1) In the case the Applicants intend to further prosecute the present application,

independent claims in accordance with Rule 6.3(b) PCT (those features known in combination from **D1** being placed in the preamble and with the remaining features being included in the characterising part) and Rule 6.2(b) PCT (reference signs placed in parentheses) should be filed.

- 2) If amendments are filed, the Applicant must comply with the requirements of **Rule 66.8 PCT** and indicate the basis in the originally filed application of the amendments made (Article 34 (2) (b) PCT) otherwise these amendments will not be taken into consideration for the establishment of international preliminary examination.